

IN THE IOWA DISTRICT COURT FOR BUTLER COUNTY

STATE OF IOWA (99AG45000)

vs.

MARK DARYL BECKER,

Defendant.

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CRIMINAL NO. FECR 008809

RESISTANCE TO DEFENDANT'S
MOTION FOR NEW TRIAL

COMES NOW the State of Iowa through its prosecuting attorneys and responds to the defendant's motion as follows:

1. The defendant was convicted of Murder in the First Degree by a Butler County jury on March 2, 2010. Sentencing is set for April 14, 2010, in Butler County District Court.

2. The defendant filed a Motion for New Trial claiming the Court erred in failing to give two proposed instructions to the jury. Further, the defendant generally claims that the verdict was contrary to the law and evidence as it relates to his defense of insanity.

3. Iowa Rule of Criminal Procedure 2.24(2)(b)(6) gives the district court authority to grant a new trial and State v. Ellis, 578 N.W.2d 655 (Iowa 1998) details the conditions under which a new trial should be granted. The standard set forth in Ellis is that "contrary to the evidence" in the court rule governing grounds for a motion for new trial, means contrary to the weight of the evidence, rather than not supported by sufficient evidence. Ellis at 657

4. The verdict is not contrary to the weight of evidence. Evidence was presented to the jury by the defendant in support of his defense of insanity. It was rejected. Ample evidence exists establishing the defendant at the time of the murder had the sufficient mental capacity to understand the nature and quality of his acts as relates to the acts he is accused of and the sufficient mental capacity to tell the difference between right and wrong as to the acts he is accused of. The facts include, but are not limited to, the following.

- A) The defendant's detailed plan to murder Ed Thomas.
- B) The defendant's repeated practice with the murder weapon at his home prior to the murder of Ed Thomas.
- C) The defendant's concealment of his plan to others, including his parents.
- D) The defendant's normal appearance immediately before the murder to those who knew him.
- E) The defendant's repeated references to Ed Thomas as a human being not a supernatural being.
- F) The defendant's ability to provide a coherent understandable statement of how the plan to murder Ed Thomas was executed.

5. By reference the State incorporates it's closing argument in support of the position that the verdict is not contrary to the weight of evidence.

6. The defendant proposed two instructions to the Court requesting each be given to the jury. Each of the instructions as proposed is set forth in the defendant's motion.

7. Each instruction was considered by the Court and rejected. By reference the State of Iowa incorporates its argument at trial in support of this resistance that the Court acted properly in denying the defendant's request to submit the two proposed instructions.

8. Specifically, the first instruction urged by the defendant is an incomplete recitation of what occurs upon a verdict of not guilty by reason of insanity.

A) There appears to be a misconception among some in the public and media that a defendant who is found not guilty by reason of insanity is locked-up for the remainder of their life. Not only is a defendant evaluated, he is evaluated every 60 days following the verdict and *must be released upon a finding that he is not mentally ill and no longer a danger to the defendant's self or others*. See Iowa Rule of Criminal Procedure 2.22(8)(e) and State v. Huss, 666 N.W.2d 152 (Iowa 2003).

B) As a practical matter the defendant can be kept in a less secure facility such as a state Mental Health Institute or facility other than a prison.

9. The second instruction urged by the defendant is an incorrect statement of the law. As it relates to the elements of the defense of insanity, the law is correctly stated in the Court's instruction and Iowa Uniform Jury Instruction 200.11.

A) To adopt the defendant's version of the elements of insanity would in-effect adopt a statement of the law whereby if the defendant proved he was

mentally ill he could escape responsibility for the crime he committed.

Such a "cause and effect" test is not the test in Iowa.

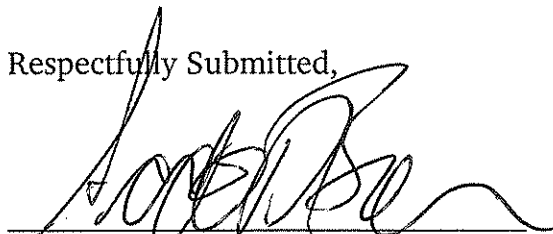
B) Iowa has long adhered to the *M'Naughten Rule* which is correctly stated in the instruction.

10. The verdict in this case is not contrary to the weight of evidence

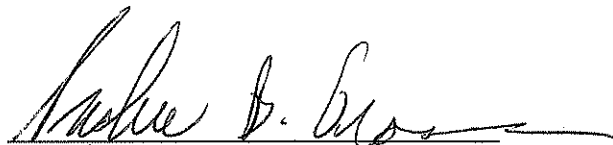
11. The verdict in this case is not contrary to the law.

WHEREFORE the State of Iowa requests the Court overrule the defendant's Motion for New Trial.

Respectfully Submitted,



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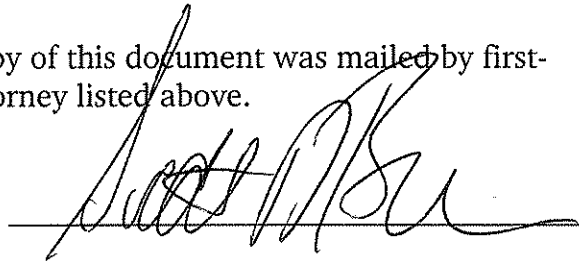
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I certify that on April 13th, 2009, a copy of this document was mailed by first-class mail/~~e-mailed~~/hand-delivered to each attorney listed above.

A handwritten signature in black ink, appearing to be "Scott R. Brown", is written over a horizontal line.